

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JAMALL S. BAKER,

Plaintiff,

v.

TAMMY O'REILLY, *et al.*,

Defendants.

CASE NO. 2:21-cv-00361-MJP-JRC

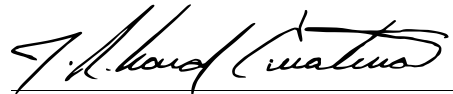
ORDER GRANTING LEAVE TO
AMEND

The District Court has referred this matter to Chief United States Magistrate Judge J. Richard Creatura. Plaintiff, proceeding *pro se*, filed a civil rights complaint pursuant to 42 U.S.C. § 1983. Plaintiff's fourth amended complaint is currently the operative complaint, filed on September 27, 2022. Dkt. 118. On October 6, 2022, defendant McLane (incorrectly spelled as "McLean" in the complaint) filed a motion to dismiss the fourth amended complaint, arguing that plaintiff has failed to allege personal participation by defendant McLane in any of the alleged constitutional violations. Dkt. 119. Plaintiff filed a response on October 19, 2022, seeking to file what he terms as a "corrected complaint." Dkt. 124. Specifically, plaintiff asserts that he "left out some very important information" in his fourth amended complaint (Dkt. 124),

1 attaches a proposed fifth amended complaint (Dkt. 124-1), and states, “this complaint is modeled
2 from the Third Amended complaint with some added content, but the claims that made it through
3 that process and was ruled on in the report and recommendation are basically the same” (Dkt.
4 124). Defendant McLane replied, arguing that the proposed amendment would not cure the
5 deficiency of the fourth amended complaint and, thus, permitting an amendment would be futile.
6 *See* Dkt. 125 at 2. Because plaintiff has attached a proposed fifth amended complaint to his
7 response to the motion to dismiss, the Court construes plaintiff’s response as a motion for leave
8 to file a fifth amended complaint.

9 The Court has reviewed the proposed fifth amended complaint and finds it satisfies the
10 requirement for personal participation as to defendant McLane, as well as acts as a complete
11 substitute for the fourth amended complaint. *See* Dkt. 124-1. Recognizing that motions to amend
12 are granted when it promotes justice, *see* Fed. R. Civ. P. 15(a)(2), and because there would be no
13 prejudice in permitting the amendment sought by plaintiff, nor would it be futile to amend, the
14 Court grants plaintiff’s motion for leave to amend. Dkt. 124-1. The Clerk is directed to docket
15 the proposed fifth amended complaint. Dkt. 124-1. The motion to dismiss (Dkt. 119) and motion
16 to sever misjoined parties (Dkt. 122) are dismissed as moot. All remaining defendants are
17 directed to file an answer or otherwise respond to the fifth amended complaint within fourteen
18 days of the date of this Order. *See* Fed. R. Civ. P. 15(a)(3).

19 Dated this 28th day of October, 2022.

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22 J. Richard Creatura
23 Chief United States Magistrate Judge
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